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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/762,586      02/09/01      FURUHASHI

T      0649-0774P

EXAMINER

002292      IM52/0727  
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ART UNIT	PAPER NUMBER

1761  
DATE MAILED:

07/27/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.  
**09/762,586**

Applicant(s)  
**Furuhashi et al.**

Examiner  
**Lien Tran**

Art Unit  
**1761**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb. 9, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 20) ☐ Other:

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1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, "the baking step" is unclear because it is not known what baking step the claim is referring to; the previous claims have not recited any baking step.

In claim 5: Line 2, is "a pie dough" the same as that recited in claims 1-3; if so, --- said or the--- should be used to give proper antecedent basis.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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5. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dougan in view of Yong et al.

Dougan discloses a frozen puff pastry product which is made of a dough mixture of flour, water and fat. The pastry is made by traditional folding and rolling procedure to give a pastry having three layers of dough separated by two layers of fat. The dough mixture also contains baking powder. The puff pastry can be filled as desired. (See columns 4-6)

Dougan do not disclose the presence of voids and a chemical leavening agent between the dough and fat layers, the density, the gas yield per gram and the step of spreading chemical leavening agent on the surface of the dough.

Yong et al teach a method of incorporating leaveners into a dough by sprinkling one or both of leaveners onto the flour/water matrix or dough after forming the flour/water matrix or mixing the leaveners into the shortening before laminating the shortening to the dough. Yong et al teach that by not mixing the leaveners into the flour/water matrix but keeping them substantially isolated provides good line time characteristics and gives versatility in the type of leaveners used. (See columns 7-9)

It would have been obvious to one skilled in the art to follow the teaching of Yong et al in adding the leaveners in the Dougan product to obtain the benefits taught by Yong et al. While Yong et al do not specifically disclose pastry dough, the dough composition of Yong et al essentially comprises the same ingredients and Yong et al also teach laminating to obtain dough having alternate layers of dough and fat. The claimed presence of voids and leavening agent is

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obtained by spreading the leaveners onto the dough layer; thus, it is obvious when the method of incorporating the leaveners of Yong is used in the Dougan dough, such feature will also be obtained. As to the density and the gas yield, the Dougan product is the same type of product as claimed; thus, it is expected the density and gas yield will be similar.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pesheck et al disclose pre-baked microwaveable pastry systems.

Kwis et al disclose pie having a microwave brownable crust.

Totino et al a disclose fried dough product.

Forkner discloses cooked dough having a frozen dessert filling.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

July 25, 2001

  
LIEN TRAN  
PRIMARY EXAMINER  
